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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,075	10/20/2003	Toshifumi Masaki	1232-5178	4876
27123 7590 03/29/2007 MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101			EXAMINER HOEKSTRA, JEFFREY GERBEN	
			ART UNIT 3736	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/29/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/690,075

Applicant(s)

MASAKI, TOSHIFUMI

Examiner

Jeffrey G. Hoekstra

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 5-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice of Amendment

1. In response to the amendment filed on 01/12/2007, amended claim(s) 1 and 4 is/are acknowledged. The current rejections of the claim(s) 1-4 is/are *withdrawn*. The following new and reiterated grounds of rejection are set forth:

Election/Restrictions

2. This application contains claims 5-8 drawn to an invention nonelected with traverse in Paper No. 20060809. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Objections

3. Claim 1 is objected to because of the following informalities: the positive recitation of "said detection results is a brightness of bright points" may render the claim indefinite for failing to distinctly point out what Applicant considers is patentably distinguishable subject matter. The Examiner notes "a brightness" appears to correlate to a magnitude of a measured quantity, but as claimed "a brightness" is ambiguous and does not positively recite a measured detection result being a measured quantity comparable of a reference value. Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Minemoto et al (JP 2002172090 A2, IDS NPL: English Language Abstract of JP 2002-172090, hereinafter Minemoto) in view of Katsuragi (US 5,469,233) as broadly as structurally claimed.

6. Minemoto discloses a non-contact tonometer, comprising:

- an alignment light source (the source of element 30) for projecting a light flux for alignment ;
- alignment detection means for receiving (the detector of element 30) reflection light of said light flux for alignment;
- pressurizing means for blowing (lines 5-6) a fluid onto the cornea of the eye;
- an intraocular pressure measurement light source (the source of element 50) for projecting a light flux;
- intraocular pressure measurement light receiving means for detecting (the detector of element 50) a reflected light quantity of said light flux;
- deformation detection means for detecting (102) a predetermined output value from said intraocular pressure measurement light receiving means to detect certain deformation of the cornea; and

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- reliability determination means for comparing (the programming of element 102) an output of said intraocular pressure measurement light receiving means and a reference value to determine reliability; and
- wherein said reference value is changed in accordance with a detection result of said alignment detection means (lines 6-8);
- wherein said reference value is capable of being changed based on reflected light quantity of the alignment light flux from the eye to be examined received by said alignment detection means;
- wherein said reference value is capable of being changed based on a peak value of the alignment light flux reflected from the eye to be examined detected by said alignment detection means; and
- wherein a measurement of the intraocular pressure is capable of additionally being performed when a determination output of said reliability determination means is of high reliability.

7. Minemoto discloses the claimed invention except for explicitly disclosing changing a reference value based on a detection result, wherein the detection result is a quantity representative of the brightness of bright points based on image data.

Katsuragi teaches a non-contact tonometer, including: changing a reference value based on a detection result, wherein the detection result is a quantity representative of the brightness of bright points based on image data (abstract). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the non-contact tonometer as taught by Minemoto, with the non-contact

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tonometer as taught by Katsuragi for the purpose of increasing the efficacy of an intraocular pressure measuring device to accurately measure via comparisons to a reference value.

Response to Arguments

8. Applicant's arguments with respect to claims 1-4 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey G. Hoekstra whose telephone number is (571) 272-7232. The examiner can normally be reached on Monday through Friday, 8:00 a.m. to 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max F. Hindenburg can be reached on (571) 272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JH

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MAX F. HINDENBURG
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